IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3636 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANGIBEN LALLUBHAI - Petitioner(s)
Versus
STATE OF GUJARAT & 6 - Respondent(s)

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Appearance :
MR HM PRACHCHHAK for Petitioner(s) : 1,
MR OVERNMENT PLEADER for Respondent(s) : 1 - 2.
MR DHIRENDRA MEHTA for Respondent(s) : 3,
RULE SERVED for Respondent(s) : 4 - 7.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/06/2007

ORAL JUDGMENT

1. Mr.H.M. Prachchhak, learned counsel for the petitioner and Mr.M.R. Mengdey, learned Assistant Government Pleader for the respondent Nos.1 and 2. Mr.Dhirendra

Mehta, learned counsel for the contesting respondent. None for the respondent Nos.4 to 7 though served.

2. Short facts necessary for disposal of the present writ application are that one Bhuliben widow of Lallubhai Raviabhai made an application under sec.73-AA of the Bombay Land Revenue Code to the learned District Collector seeking permission to transfer the land as the permission of the Collector was required in case of transfer / alienation from tribal vendor to non-tribal vendee, permission was accorded on 17/8/1984 and the document of sale was registered on 18/8/1985. Almost after 11 years, present petitioner claiming to be dauhter of deceased Lallubhai and Bhuliben filed Case No.SRD/Land/SAT/Vashi/96 of 1997 before the Secretary (Appeals), Revenue Department, challenging order dtd.17/8/1984 passed by the Collector in Case No.Land/Vashi/3236 of 1984 granting permission to the tribal woman to alienate the property in favour of respondent No.3 – a non-tribal person. Revision petition was dismissed on 25/2/1997 observing that when such permissions are accorded, in fact, permissions are accorded under the authority of the State Government,

therefore, such permissions cannot be challenged before the State Government or any revisional / appellate authority. Being aggrieved by non entertainment of the said revision on the question of maintainability and jurisdiction, the petitioner is before this Court.

3. Mr.Prachchhak, learned counsel for the petitioner submits that if the revision petition was not maintainable then this Court should exercise its power under Article 226/227 of the Constitution of India and quash the permission granted by the Collector for transfer of the land. His submission is that the land, in fact, belonged to the father of the petitioner and respondent Nos.4 to 7, but after deletions of the names of respondent Nos.4 to 7, other sisters of the petitioner, Bhuliben widow of Lallubhai Raviabhai transferred the land. According to the petitioner, as she has right in the property, permission to alienate could not be accorded in favour of the mother.

4. On the other hand, Mr.Dhiren Mehta, learned counsel for the contesting respondent submits that permission was accorded in the year 1984, Bhuliben widow of Lallubhai during her life time never challenged the said permission

and even the petitioner, during the life time of her mother namely Bhuliben widow of Lallubhai Raviabhai, never challenged the grant of the permission. His submission is that after 11 years, such revision petition even otherwise was not maintainable. His further submission is that present is a not a fit case for making inquiry into the grounds which persuaded the Collector to grant permission.

5. Undisputedly, the permission was accorded on 17/8/1984, the petitioner's mother namely Bhuliben widow of Lallubhai Raviabhai never challenged the grant of permission so long as she was alive. It has not come on the record that during the life time of Bhuliben widow of Lallubhai Raviabhai, petitioner-Mangiben daughter of Lallubhai Raviabhai ever challenged the grant of the permission to transfer the land. Even otherwise, the petitioner has not satisfactorily explained the delay of 11 years in challenging the order passed by the Collector. Even before this Court, the petitioner has not satisfactorily explained the delay of 11 years in challenging the order passed by the Collector. Even before this Court, the petitioner has not said that as to

why the permission could not be challenged within a reasonable time and why the petitioner took 11 years to challenge such proceedings.

6. Taking into consideration the totality of the circumstances, I am of the opinion that the action taken by the petitioner is unduly delayed and belated. She has not explained the reasons which occasioned the delay, nor has she shown to the Court that after deletion of the names of the petitioner and respondent Nos.4 to 7, what steps were taken by them to challenge the order directing deletion of their names. So long as the order directing deletion of names of the daughter stands, present petitioner would not be entitled to contend that she had some right in the property and the permission in favour of the mother could not be granted. The petitioner was required either to challenge the correction of the entry by filing appropriate proceedings before the revenue courts or a competent civil suit before the Civil Court for declaration of her title and partition of the property. She has not done so. Under the circumstances, the petitioner is not entitled to challenge the order dtd.17/8/1984. On the merits, I find no reason to interfere

in the matter.

7. The petition deserves to and is accordingly dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

(R.S. GARG, J.)

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